

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

Plaintiff/
Moving Party

- and -

JIM BOAK, JOANNE CALLAWAY, HILDA FISHER,
LORI INVERARITY, LEO LUCIO, GIL PONTE, MANBAE SINGH-GALL
DARLENE THOMPSON and JOHN DOE

Defendants/
Responding Parties

FACTUM OF THE AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

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WITHOUT NOTICE

FACTUM OF THE PLAINTIFF/MOVINGS PARTY

PART I – OVERVIEW

1. The Plaintiff, Automotive Parts Manufacturers' Association ("APMA"), brings this Motion as a representative Plaintiff for an interim injunction to restrain the Defendants from establishing a blockade, or in any way impeding access, to the Ambassador Bridge in Windsor, Ontario.

PART II – ISSUES

2. The issue to be decided on this Motion is to be decided on this motion is as follows:
1. Should an interim/interlocutory injunction and/or a statutory injunction under s. 440 of the *Municipal Act, 2001*, be granted to prevent the Defendants from impeding access to the Ambassador Bridge?

PART III – THE LAW AND ANALYSIS

Issue: Should an interim/interlocutory injunction and/or a statutory injunction under s. 440 of the *Municipal Act, 2001*, be granted to prevent the Defendants from impeding access to the Ambassador Bridge?

3. In an urgent case, a motion may be made before the commencement of a proceeding on the moving party's undertaking to commence the proceeding forthwith.

Rules of Civil Procedure, RRO 1990, Reg 194, Rule 37.17.

4. Section 101 of the *Courts of Justice Act* states that "[i]n the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted ...where it appears to a judge of the

court to be just or convenient to do so." Rule 40 allows for an interlocutory injunction or mandatory order to be granted on a without notice motion for a period of up to ten days.

Courts of Justice Act, RSO 1990, c C.43, Section 101

Rules of Civil Procedure, RRO 1990, Reg 194, Rule 40

5. The test for an interim injunction requires the moving party to demonstrate that:
 - a. There is serious issue to be tried;
 - b. Irreparable harm will result if the relief is not granted; and
 - c. The balance of convenience favours the moving party.

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 at paras 77-80.

6. The Plaintiffs state that they are seeking a prohibitive injunction. The case law is clear that the threshold a moving party must meet to obtain a prohibitive injunction is *lower* than on a mandatory injunction that seeks to compel a party to act positively.

Sobeys Capital Inc. v. Sentinel (Sherbourne) Land Corp., [2014] O.J. No. 5998 (Sup. Ct.) at para 18

Serious issue to be tried

7. The threshold for this prong of the test is low. If the motion is neither vexatious nor frivolous, this prong of the test should be considered satisfied.

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 at para 50

8. It is widely accepted that this type of preliminary merits-based assessment is distinct from a final determination of the dispute. When preliminary or interlocutory orders require some assessment of the merits, the court is cautioned against attempting to make anything approaching

a final determination of the issue. The court typically looks to see if the case is "arguable", "raises a serious issue to be tried" or is "not frivolous and vexatious".

Cytrynbaum v. Look Communications Inc., 2013 ONCA 455 at para 54.

9. The APMA submits that there is a serious issue to be tried with respect to whether damages have been suffered, and will continue to be suffered, as a result of the Respondents' nuisance, intentional interference with economic/contractual relations, and other potential torts.

Public Nuisance

10. In *Ryan v. Victoria (City)*, the Supreme Court of Canada described the test for public nuisance as follows:

The doctrine of public nuisance appears as a poorly understood area of the law. 'A public nuisance has been defined as any activity which unreasonably interferes with the public's interest in questions of health, safety, morality, comfort or convenience': see Klar [Klar, Lewis N. Tort Law, 2nd ed. Scarborough, Ont.: Carswell, 1996], at p. 525. Essentially, '[t]he conduct complained of must amount to . . . an attack upon the rights of the public generally to live their lives unaffected by inconvenience, discomfort or other forms of interference': See G. H. L. Fridman, *The Law of Torts in Canada*, vol. I (1989), at p. 168. An individual may bring a private action in public nuisance by pleading and proving special damage. See, e.g., *Chessie v. J. D. Irving Ltd.* (1982), 1982 CanLII 2918 (NB CA), 22 C.C.L.T. 89 (N.B.C.A.). Such actions commonly involve allegations of unreasonable interference with a public right of way, such as a street or highway.

Ryan v. Victoria (City), 1999 CanLII 706 (SCC), [1999] 1 SCR 201 at para 52.

11. The APMA submits that it clearly has an arguable case against the Respondents in public nuisance, in that the Respondents' conduct has caused special damage in the approximate sum of \$600 Million to the automotive industry in Canada. At the very least, the APMA's claim is not frivolous and vexatious.

Intentional Interference with Economic Relations

12. The APMA further submits that it has a viable cause of action against the Respondents for their intentional interference with economic relations, also known as the "unlawful means" tort.

13. The Court of Appeal provided a succinct summary of the test for the "unlawful means" tort in *Grand Financial Management Inc. v. Solemio Transportation Inc.* At paragraph 62, the Court of Appeal wrote as follows:

The trial judge properly identified the three essential elements of the tort as traditionally understood: first, the defendant must have intended to injure the plaintiff's economic interests; secondly, the interference must have been by illegal or unlawful means; and thirdly, the plaintiff must have suffered economic harm or loss as a result.

Grand Financial Management Inc. v. Solemio Transportation Inc. 2016 ONCA 175 (CanLII) at para 62.

14. The APMA submits that, by blockading and impeding access to the Ambassador Bridge, the Respondents have intended to injure the APMA's economic interests. The APMA further submits that the means through which the Respondents are injuring the APMA's economic interests are unlawful, in that they violate the City of Windsor's by-laws, sections 426 of the *Municipal Act, 2001*, sections 132 of the *Highway Traffic Act*, and various provisions of the *Criminal Code of Canada*.

Municipal Act, 2001, S.O. 2001, c. 25, s. 426.

Highway Traffic Act, R.S.O. 1990, c. H.8, s. 132.

Criminal Code (R.S.C., 1985, c. C-46), ss. 175(1)(a)(iii), 180(2)(b) and 430(1)(c) and (d).

Irreparable harm

15. "Irreparable" refers to the nature of the harm suffered rather than its magnitude.

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 at para 43.

16. The APMA submits that it is plain and obvious that the actions of the Defendants in blockading and impeding access to the Ambassador Bridge are having a significant economic impact on a multitude of persons within Canada. The shipment of automotive parts and supplies, as well as the shipment of goods in other industries, is of paramount importance and trumps the Respondents' unlawful activities.

Balance of convenience

17. An assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits.

RJR-MacDonald Inc. v. Canada (Attorney General), [1994] 1 S.C.R. 311 at para 43.

18. The APMA submits that the balance of convenience weighs heavily in favour of the APMA.

19. Section 440 of the *Municipal Act, 2001*, allows a municipality to bring an Application to restrain a person from contravening its by-laws. The section reads:

Power to restrain

440. If any by-law of a municipality or by-law of a local board of a municipality under this or any other Act is contravened, in addition to any other remedy and to any penalty imposed by the by-law, the contravention may be restrained by application at the instance of a taxpayer or the municipality or local board.

Municipal Act, 2001, S.O. 2001, c. 25, s. 440.

20. The APMA submits that as the City of Windsor's bylaws have been violated by the Defendants, the APMA as a representative Plaintiff for ratepayers, may bring this Motion to restrain the Respondents from contravening the City of Windsor's by-laws.

PART IV – NATURE OF ORDER REQUESTED

21. The Plaintiffs seek the following relief:

1. An Order in accordance with the draft Order submitted by the Moving Party.

ALL OF WHICH IS RESPECTFULLY SUBMITTED:

Dated: February 10, 2022



Michael A. Wills
LSO #397970

Lawyer for the Plaintiff

AUTOMOTIVE PARTS MANUFACTURERS' ASSOCIATION

v.

JIM BOAK et al

Court File No.: CV-

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT WINDSOR

**FACTUM THE AUTOMOTIVE PARTS
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